COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2)(b)]
Description of case

Criminal Appeal No. 620 of 2001 **Decided on 19th May 2005**
(Old No. 2129/1989)

Khushal Singh
S/o Shri Heera Singh
R/o Padampur, Motadhak,
P.S. Kotdwar,
District Pauri Garhwal
…….. Appellant

Versus

The State of Uttaranchal …….. Respondent

A.F.R. (Approved for reporting)
~~Not approved for reporting.~~

Date 19.05.2005

(Hon'ble Mr. Justice Irshad Hussain)

(Hon'ble Mr. Justice Rajesh Tandon)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 620 of 2001
(Old No. 2129/1989)

Khushal Singh
S/o Shri Heera Singh
R/o Padampur, Motadhak,
P.S. Kotdwar,
District Pauri Garhwal.

…… Appellant

Versus

The State of Uttaranchal …… Respondent

Mr. Vidhyadhar Pandey, Advocate assisted by
Mrs. Pushpa Joshi, Advocate for the appellant.
Mr. A. Rab, Addl. Govt. Advocate assisted by Mr. S.A. Siddiqui,
and Mr. Rajeev Mohan, Brief Holders for the respondent-State.

Coram: **Hon'ble Irshad Hussain, J.**
Hon'ble Prafulla C. Pant, J.

Dt: 19th May, 2005.

[Per Hon'ble Prafulla C. Pant, J.]

This Appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the judgment and order dated 24.10.1989, passed by the then learned Sessions Judge, Pauri Garhwal, in Sessions trial No. 34 of 1986 whereby, the appellant Khushal Singh has been convicted of the charge punishable under Section 302 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.) and sentenced to undergo imprisonment for life.

2) We heard learned counsel for the parties and perused the entire evidence on record.

3) In brief, prosecution story is that appellant Khushal Singh, a Forest Ranger, on 29.04.1986 at about 08:30 P.M. stabbed Sri Surendra Dutt Chamoli, Forester, with a knife with an intention to kill him. The incident took place in village, Kanakhet, Patti Maniyarsyun, District Pauri Garhwal on the road in front of the office of the Forest Department. Co-accused Ganpati, a Forester, alongwith his Orderly Raghunandan (Ganpati was not chargesheeted by the Investigating Officer and co-accused Raghunandan was acquitted by the trial court) aided the appellant in the stabbing incident. A First Information Report (Ext. A -9) was lodged by Prem Lal Chamoli (P.W. 3), a Deputy Ranger of Forest Department, on the same day i.e. 29.04.1986 at about 08:45 P.M. i.e. immediately after the incident within 15 minutes with patti patwari Maniyarsyun, which is hardly at a distance of 110 meters from the place of incident. On the basis of said First Information Report lodged by Prem Lal Chamoli (P.W. 3), check report (Ext. A –10) was prepared by Hari Prasad (P.W. 6), patti patwari – Maniyarsyun under Section 302 of the I.P.C against the appellant Khushal Singh (in Uttaranchal hills in certain areas Patwaris are given police powers). An entry was made by the patwari in the general diary (copy of extract Ext. A -11) regarding lodging of the First Information Report by said officer. Crime number 02 of 1986 was registered against the appellant Khushal Singh, and other co-accused Ganpati and Raghunandan regarding offence punishable under Section 302 read with Section 34 of the I.P.C. In the First Information Report, the informant alleged that there was enmity between the deceased and appellant Khushal Singh for sometime over payment of money and about 3-4 days before the date of incident appellant had given beating to deceased at

his residence. Soon after the F.I.R. was registered, it appears that Hari Prasad, the Investigating Officer, proceeded to the spot and took the dead body of Surendra Dutt Chamoli (deceased) in his possession and prepared the inquest report (Ext. A -4). Arrest memo (Ext. A -15) shows that appellant Khushal Singh was arrested on next day i.e. 30.04.1986 at about 10 A.M. The recovery memo (Ext. A -16) shows that on the same day i.e. 30.04.1986, knife used in the commission of crime was also recovered at the instance of the appellant. The other co-accused were also arrested. Shri Hari Prasad (P.W.6), the Investigating Officer prepared site plan (Ext. A -13), the diagram of the dead body (Ext. 3-A), letter of the Chief Medical Officer (Ext. 2-A) and police form No. 13 (Ext. 8-A) etc. and sent the dead body for the postmortem examination.

4) On 01.05.1986 at about 11:00 A.M., Dr. M.S. Rawat (P.W. 1) conducted the postmortem examination on the dead body of Surendra Dutt Chamoli and prepared postmortem report (Ext. A –1). The Medical Officer observed at the time of postmortem examination that the dead body was of an average built person aged about 25 years which was about 1-1½ day old. Rigor mortis was present but passing off from neck and upper limps. The abdomen was found distended and no other signs of decomposition were visible externally. Dried clotted blood with mud was present over the right side of the face. Blood also found clotted over left ear and neck. The Medical Officer found following ante mortem injuries at the time of autopsy:-

i) Abraded contusion 6 cm X 4 cm over right forehead on section sub-cutaneous ecchymosis present.

ii) Oblique abraded contusion 2.5 cm X 0.5 cm over left forehead on section sub-cutaneous ecchymosis present.

iii) Multiple linear abrasions over an area 8 cm X 6 cm back of right elbow.

iv) Verticle linear contusion 19 cm X 2 cm over outer aspect of left thigh middle part on section S/c ecchymosis present.

v) Abraded contusion 2 cm X 0.5 cm over back of left elbow. Sub-cutaneous ecchymosis present.

vi) Abraded contusion vertically 4 cm X 1 cm over back in midline, Sub-sutaneous ecchymosis present at the level of T 10 verticle.

vii) Stab wound 2.5 cm X 1 cm, spindle shape and gaping, margins clean cut with bruising in postero inferior corner, situated anterior-superiorly-obliquely-just anterior to left anterior axillary line – 2 inches (5 cm) inferrolateral to left nipple-on left side of chest lower part, edges inverted. Fat tissue and clotted blood present in the wound cavity. Tailing of the wound 2 cm. long vertical and laterally downwards from postero-interior corner of the wound. Direction of the stab wound-interiorly upwards and then posteriorly in the chest cavity. On dissection and removing the skin and sub-cutaneous tissue extravasation of coagulated (clotted) blood in sub-cutaneous tissues and muscle plains. Muscles stabbed elliptically 2.5 cm X 2 cm in the 5^{th} intercostals space, 8 cm lateral to the median plane deep to thoracic cavity. Over the upper border of the wound 5^{th} rib is cut and beretted sharply, direction upwards and medially to another stabbed wound in the muscle 3 cm X 2 cm, elliptically in the 4^{th} 1-C- space 6 cm lateral to median plane. Margins of these wounds are clean cut, communicating to left thoracic cavity. On further opening the chest wall of

left side dark clotted fluid stood filled in left hemi-thorax. Left lung collapsed, clean cut wound 4 cm X 2 cm. over upper lobe of left lung 5 cm above the lingual. Pericardium incised. Clean cut stab wound transversely over left ventricle 4 cm X 1 cm muscle deep leading into the cavity over left border of heart 6 cm above the apex. Left ventricle empty.

On internal examination in the stomach semi digested food material about 100 ml. found. In the small intestine semi digested food material and gases were found. In the large intestine faecal matter and foul gases were present. Liver was found weighing 1100 gms. Spleen – 120 gms. According to the Medical Officer, cause of death was haemorrhage and shock as a result of injury to heart and lungs.

5) On completion of the investigation, patti patwari (Investigating Officer) submitted the charge sheet (Ext. A -18) against appellant Khushal Singh and another co-accused Raghunandan for their trial regarding the offence punishable under Section 302 / 34 of the I.P.C. The concerned Magistrate on receipt of the charge sheet, after giving necessary copies to the accused persons, committed the case to the court of sessions for trial. The learned Sessions Judge, Pauri Garhwal, on 05.06.1987, after hearing the parties, framed charge relating to offence punishable under Section 302 of the I.P.C. against the appellant Khushal Singh and also charged the co-accused Raghunandan under Section 302 read with Section 109 of the I.P.C. Appellant as well as the co-accused Raghunandan denied the charges levelled against them and claimed to be tried. Thereafter, prosecution examined P.W. 1, Dr. M.S. Rawat (who conducted the postmortem examination); P.W. 2, Magan Singh (village Pradhan), before whom inquest report was prepared; P.W. 3, Prem Lal Chamoli (informant); P.W. 4,

Girdhari Lal (eye witness); P.W. 5, Durga Das (another eye witness) and P.W. 6, Hari Prasad (Patwari / Investigating Officer). The oral and documentary evidences on record were put to the appellant under Section 313 of the Cr.P.C., to which he alleged it to be false. After hearing the parties the learned Sessions Judge, Pauri Garhwal found the co-accused Raghunandan not guilty of the charge, however, appellant Khushal Singh was found guilty by the learned trial court of the offence punishable under Sections 302 of the I.P.C. and was convicted and sentenced as mentioned earlier. Aggrieved by which this appeal has been filed.

6) After hearing the parties and examination of evidence on record we found that the First Information Report (Ext. A –9) read with the check report (Ext. A –10) and copy of extract of the general diary (Ext. A –11) shows that the First Information Report was lodged promptly without unnecessary delay. The incident took place on 29.04.1986 at about 08:30 P.M. The office of the patwari was at a distance of 110 meters from the scene of crime, where the report was lodged on the very day at 08:45 P.M. This fact is proved on record by P.W. 3, Prem Lal Chamoli and also by P.W. 6, Hari Prasad. From the evidence on record there appears no enmity against these witnesses, and the F.I.R. as such, appears to be prompt and natural story of the incident. Learned counsel for the appellant argued that the F.I.R. is ante timed. In this connection, he drew attention to the statement of P.W. 2, Magan Singh, who is a witness of the preparation of the inquest report. He has stated that on 29.04.1986 he was called by the patwari when the inquest report (Ext. A –4) was being prepared. In the cross examination, this witness has stated that his house was at a distance of one kilometer from the office of the patwari. This witness further states that Prem Lal Chamoli (Deputy Ranger and informant) and P.S. 6, Hari Prasad (Patwari) were already

there at the time of preparation of inquest report. We did not find anything in the cross examination of this witness which indicates that the F.I.R. was ante timed.

7) The eye account given by eye witnesses Girdhari Lal (P.W. 4) and Durga Das (P.W. 5) is also natural and trustworthy. P.W. 4, Girdhari Lal has stated that in the year 1986 he was also serving in the Forest Department. On 29.04.1986 at about 08:00 P.M. when he heard noise he came out and saw Surendra Dutt Chamoli (deceased) hurling abuses at Ranger Officer (appellant) and he was drunk at that time. People present there persuaded him and took him inside the room. Thereafter he again started throwing stones. One this Raghunandan came out. The deceased started hurling abuses at him also. Then appellant Khushal Singh came out armed with a knife and stabbed Surendra Dutt Chamoli (deceased). P.W. 5, Durga Dass has also corroborated the prosecution story, who states that in April 1986 he was Forest Guard and appellant was Forest Ranger. This witness also stated that Raghunandan was the cook of the appellant. P.W. 5, Durga Das further states that before the incident of stabbing the appellant and the deceased quarreled but were pacified. Soon after appellant came out armed with a knife and stabbed Surendra Dutt Chamoli in the chest. From the evidence on record there appears no enmity of these witnesses as against the appellant and there is nothing to doubt the ocular evidence given by them.

8) Learned counsel for the appellant argued that the prosecution has failed to prove the motive for commission of crime. We are of the opinion that, it is not necessary to prove the motive for commission of crime. And, it is only the intention which is relevant for establishing the charge. However, there was ample reason mentioned in the F.I.R. as well as in the statements of the witnesses that there was some

dispute relating to payment of money between the deceased and the appellant. It has also been proved by the prosecution that before the stabbing was done by the appellant, abuses were hurled by the deceased. This appears to have provoked the appellant and he came out of his room armed with a knife and stabbed the deceased. In the circumstances, it cannot be said that the motive is missing or atleast there is apparent reason why the appellant stabbed the deceased. Also, learned trial court has rightly given benefit of doubt to the co-accused Raghunandan as it is not established that he had common intention with appellant in commission of impugned murder.

9) Ante mortem injuries as contained in postmortem report (Ext. A –1) fully corroborate the statements of the eye witnesses. The injury No. 7, which is a stab wound confirms the use of sharp edged weapon in the commission of crime. P.W. 1, Dr. M.S. Rawat has stated that injuries could have been caused by knife. Recover memo of knife (Ext. A –16) read with statement of P.W. 6, Hari Prasad (Investigating Officer) further corroborates the prosecution story. Not only this the Chemical Examiner's report, paper No. 37-A of the paper book confirms that Article –4 i.e. the blood stained soil contained the human blood and in Article –5 i.e. knife recovered, disintegrated stains of blood were found. On behalf of the appellant it was argued that there is contradiction in the statements of Magan Singh (P.W. 2), Prem Lal Chamoli (P.W. 3) and Hari Prasad (P.w. 6) as to the fact that when the dead body was actually taken from the spot. We have perused said statements. There appears little contradiction which is significant worth even mentioning.

10) Shri Vidhyadhar Pandey, learned counsel for the appellant drew our attention to the principle of law laid down in ***Maruti Rama Naik Vs. State of Maharashtra reported in 2004***

S.C.C. (Cri)958; Vijaybhai Bhanabhai Patel Vs. Navnitbhai Nathubhai Patel reported in 2004 S.C.C. (Cri) 2032 and argued that the Investigating Officer has not promptly recorded statements of the witnesses under Section 161 of the Cr.P.C. In out opinion, in view of the clear and categorical ocular version given by the eye witnesses corroborated by the ante mortem injuries, mere such errors on the part of the Investigating Officer cannot throw the prosecution story out of board. In ***Leela Ram Vs. State of Haryana reported in A.I.R. 1999 S.C. 3717 at 3720,*** the Apex Court has held that mere irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case. In ***State of West Bengal Vs. Meer Mohd. Umar reported in 2000 (8) S.C.C. 382,*** the Apex Court has further held:

> **"Castigation of investigation unfortunately seems to be regular practice when the trial courts acquit the accused in criminal cases. In our perception, it is almost impossible to come across a single case, wherein the investigation was completely, flawlessly or was absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation……"**

Therefore, where the statement of eye witnesses are trustworthy, the prosecution story cannot be rejected for mere delay in recording statements of witnesses under Section 161 of the Cr.P.C.

11) Lastly, learned counsel for the appellant has argued that the recovery of the weapon and the arrest of the appellant as alleged appear to be doubtful. It is a settled principle of law that where there is clear ring of truth in the statements of eye witnesses, the recovery memos loose their importance unless they create a sufficient reasonable doubt as to the prosecution

story. Apart from this, we see no reason to disbelieve recovery of knife and arrest of the appellant as stated by P.W. 6 Hari Prasad, Investigating Officer.

12) In view of above discussion, we are in agreement with the findings of the learned trial court as to the fact that the prosecution has been successful in proving the charge against the appellant. As such, the appellant has rightly been convicted under Section 302 of the I.P.C. and sentenced for imprisonment for life. Therefore, the appeal is liable to be dismissed and is accordingly dismissed. The concerned court shall take the appellant Khushal Singh into custody so that he may serve out the sentence awarded against him.

(Prafulla C. Pant, J.) **(Irshad Hussain, J.)**

Dt. 19th May, 2005.
H.Negi